

1 THE HONORABLE RICHARD A. JONES
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 DIGITAL MENTOR, INC., a Delaware
11 corporation,

12 Plaintiff,

13 v.

14 OVIVO USA, LLC, a Delaware corporation;
15 OVIVO US HOLDING INC., a Delaware
corporation; VALERE MORISSETTE, an
individual; and DOES 1 to 20,

16 Defendants.

Case No. 2:17-CV-01935-RAJ

**JOINT STATUS REPORT AND
DISCOVERY PLAN**

17 Pursuant to Federal Rule of Civil Procedure (“FRCP”) 26(f), Local Civil Rule
18 (“LCR”) 26(f), the Order Regarding Initial Disclosures and Joint Status Report dated
19 February 12, 2018 (Dkt. No. 65), the Court Notice dated February 22, 2018 and the Court
20 Notice dated January 2, 2019, resetting the deadline in which to file the Joint FRCP 26(f)
21 Report, Plaintiff Digital Mentor, Inc. (“DMI”) and Defendant Ovivo USA LLC (“Ovivo
22 USA”) respectfully submit this Joint Status Report and Discovery Plan.

23
24 **I. STATEMENT OF NATURE AND COMPLEXITY OF CASE**

25 Plaintiff Digital Mentor Inc. (“DMI”) filed this action against Defendants Ovivo USA
26 LLC. (“Ovivo USA”) et al. on December 28th, 2017 for damages and injunctive relief

1 alleging the following causes of action: Violation Of The Federal Defend Trade Secrets Act ,
 2 Violation Of The Federal Racketeer Influenced And Corrupt Organizations Act, Trademark
 3 Infringement, Copyright Infringement, Violation Of The Washington Uniform Trade Secrets
 4 Act, Violation Of The Washington Consumer Protection Act, Breach Of Contract, Tortious
 5 Interference With Business Expectancy, Fraud, Breach Of Fiduciary Duty and Unjust
 6 Enrichment.
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8 To date, the motions in this action have included an Ex Parte Motion for Temporary
 9 Restraining Order and Motion for Preliminary Injunction brought on behalf of DMI. While
 10 the Court granted the TRO Motion (Dkt. No. 35), after further briefing and hearing, the
 11 Court denied DMI's Motion for Preliminary Injunction (Dkt. No. 75.) In addition, Motions to
 12 Dismiss were brought on behalf of Ovivo USA ("Ovivo USA") and its co-defendants, Valere
 13 Morrissette and Ovivo US Holding, Inc. On December 21st, 2018, the Court dismissed
 14 Valere Morrissette and Ovivo US Holding, Inc. from the case due to a lack of jurisdiction.
 15 The Court granted-in-part Ovivo USA's Motion to Dismiss, dismissing without prejudice
 16 DMI's causes of action for Violation Of The Federal Defend Trade Secrets Act, Violation Of
 17 The Federal Racketeer Influenced And Corrupt Organizations Act, Violation Of The
 18 Washington Uniform Trade Secrets Act, Violation Of The Washington Consumer Protection
 19 Act, Breach Of Fiduciary Duty and Unjust Enrichment. The case against Ovivo USA will
 20 proceed, at this stage, as to: Trademark Infringement, Copyright Infringement, Breach Of
 21 Contract, Tortious Interference With Business Expectancy and Fraud.
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1 The Parties consider this matter to be moderately complex as to the factual and legal
 2 issues involved, and also as to the nature of discovery needed to develop and present their
 3 cases.

4 **II. PROPOSED DEADLINE FOR JOINING ADDITIONAL PARTIES**

5 The parties propose that the deadline for joining additional parties be March 22,
 6 2019.

7 **III. WHETHER THE PARTIES CONSENT TO ASSIGNMENT TO A
 8 MAGISTRATE JUDGE TO CONDUCT ALL PROCEEDINGS**

9 No.

10 **IV. DISCOVERY PLAN THAT STATES THE PARTIES' VIEWS AND
 11 PROPOSALS ON ITEMS SET FORTH IN FRCP 26(f)(3)**

12 **(A) EXCHANGE OF INITIAL DISCLOSURES**

13 The Parties exchanged initial disclosures under FRCP 26(a)(1) on January 18, 2019.

14 **(B) SUBJECTS, TIMING, AND POTENTIAL PHASING OF DISCOVERY**

15 The Parties propose the following case schedule:

| Event | Proposed Date |
|--|----------------------|
| Close of Fact Discovery | September 20, 2019 |
| Disclosure of Identity of Expert Witnesses for Party Bearing the Burden of Proof | September 23, 2019 |
| Disclosure of Identity of Expert Witnesses for Party Not Bearing the Burden of Proof | October 28, 2019 |
| Opening Expert Report for the Party Bearing the Burden of Proof | October 21, 2019 |
| Rebuttal Expert Report for the Party Not Bearing the Burden of Proof | November 20, 2019 |
| Close of Expert Discovery | December 20, 2019 |
| Due Date for Dispositive Motions | January 20, 2020 |

| Event | Proposed Date |
|--|-------------------|
| Due Date for Opposition to Dispositive Motions | February 20, 2020 |
| Due Date for Replies in Support of Dispositive Motions | March 6, 2020 |
| Proposed Trial Date | May 11, 2020 |

6 **(C) ELECTRONICALLY STORED INFORMATION**

7 The Parties agree that this case will involve electronically stored information (“ESI”).

8
9 The Parties agree that documents and ESI shall be produced electronically. To the extent
10 either party believes, on a case-by-case basis, that documents should be produced in an
11 alternative format, the Parties agree that they will meet and confer in good faith concerning
12 such alternative production arrangements.

13 The Parties further agree to adopt an ESI Agreement based on this District’s ESI
14 Model Agreement, as modified by the Parties, and to preserve and produce ESI pursuant to
15 that Agreement. The Parties further agree that they will meet and confer in good faith to
16 ensure electronic discovery is proportional to the scope and nature of the dispute, and that the
17 format of each party’s production is compatible with the reasonable technical requirements
18 of the receiving party’s document management system.

20 **(D) PRIVILEGE ISSUES**

21 The Parties do not believe that this case will involve unique or extensive claims of
22 privilege or work product protection. To that end, the Parties agree to create and maintain
23 privilege logs pursuant to FRCP 26(b)(5) for responsive documents withheld on the basis of
24 privilege. The Parties agree that any materials protected from discovery by the attorney-
25 client privilege or the work product doctrine and created after December 29, 2017 (the
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1 Complaint filing date), solely for the purposes of this litigation, need not be logged.

2 Information produced in discovery that is protected as privileged or work product
3 shall be immediately returned to the producing party, and its production shall not constitute a
4 waiver of such protection, if: (i) such information appears on its face to have been
5 inadvertently produced, or (ii) the producing party provides notice promptly after discovery
6 by the producing party of the inadvertent production.

7

8 **(E) PROPOSED LIMITATIONS ON DISCOVERY**

9 The Parties do not currently propose any limitations on discovery under the Federal
10 or Local Rules of Civil Procedure.

11

12 **(F) THE NEED FOR ANY DISCOVERY RELATED ORDERS**

13 The Parties anticipate the exchange of confidential information during discovery in
14 this matter, and thus will work together to present the Court with a stipulated two-tier
15 protective order to protect the confidentiality of such information. In addition, the Parties
16 will work together to present the Court with a stipulated ESI order to govern production of
17 electronically stored information.

18 **V. THE PARTIES' VIEWS, PROPOSALS, AND AGREEMENTS ON ALL**
19 **ITEMS SET FORTH IN LOCAL RULE 26(f)(1)**

20 **(A) PROMPT CASE RESOLUTION**

21 The Parties have no suggestions at this time.

22 **(B) ALTERNATIVE DISPUTE RESOLUTION**

23 While the parties continue to be willing to consider an alternative dispute resolution
24 approach, they believe that such efforts may be premature at this time.

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1 **(C) RELATED CASES**

2 There are currently no related court cases pending. There are two pending
3 Opposition proceedings pending with the United States Patent and Trademark Office. The
4 Opposition Proceedings are pending under Opposition Nos. 91244516 and 91241101. Both
5 oppositions are stayed pending resolution of this case.
6

7 **(D) DISCOVERY MANAGEMENT**

8 The Parties agree to work together to manage discovery to promote the expeditious
9 and efficient resolution of the case to the extent practicable and appropriate.

10 The Parties agree that discovery papers and pleadings are to be served upon the
11 Parties, to the extent possible, by email to the email address of counsel of record for the
12 parties.
13

14 The Parties do not believe that the pretrial statements and pretrial order pursuant to
15 Local Rules CR 16(e), (h), (i), and (l) and 16.1 should be dispensed with.

16 **(E) ANTICIPATED DISCOVERY SOUGHT**

17 See above.

18 **(F) PHASING MOTIONS**

19 The Parties do not anticipate any other early motions at this time.

20 **(G) PRESERVATION OF DISCOVERABLE INFORMATION**

22 The Parties have discussed and confirmed that they have taken reasonable and
23 proportional steps to preserve relevant information and documents in their custody and
24 control. The Parties agree that such discussions do not waive the right or opportunity for a
25 party to argue that preservation was not reasonable, adequate or proportional or to seek
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1 remedies for spoliation.

2 **(H) PRIVILEGE ISSUES**

3 See above.

4 **(I) MODEL PROTOCOL FOR DISCOVERY OF ESI**

5 The Parties are working together to present the Court with a stipulated ESI order to
6 govern production of electronically stored information. The parties have used the Model
7 Protocol as a starting point for their discussions.

8 **(J) ALTERNATIVES TO MODEL PROTOCOL**

9 The Parties are working together to present the Court with a stipulated ESI order to
10 govern production of electronically stored information. The parties have used the Model
11 Protocol as a starting point for their discussions.

12 **VI. DATE BY WHICH DISCOVERY CAN BE COMPLETED**

13 See table of proposed schedule above.

14 **VII. WHETHER THE CASE SHOULD BE BIFURCATED BY TRYING THE
15 LIABILITY ISSUES BEFORE THE DAMAGES ISSUES, OR
16 BIFURCATED IN ANY OTHER WAY**

17 At this time, the Parties do not believe that the issues need to be bifurcated.

18 **VIII. WHETHER THE PARTIES INTEND TO UTILIZE THE
19 INDIVIDUALIZED TRIAL PROGRAM OR ADR**

20 The Parties are not agreeable to participating in the Individualized Trial Program at
21 this time. The Parties continue to consider whether to utilize ADR in the future.

22 **IX. ANY OTHER SUGGESTIONS FOR SHORTENING OR SIMPLIFYING
23 THE CASE**

24 The Parties currently have no suggestions for shortening or simplifying the case.

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1 **X. THE DATE THE CASE WILL BE READY FOR TRIAL**

2 The Parties believe the case will be ready for trial on May 11, 2020.

3 **XI. WHETHER THE TRIAL WILL BE JURY OR NON-JURY**

4 Plaintiff has requested a jury trial.

5 **XII. THE NUMBER OF TRIAL DAYS REQUIRED**

6 Plaintiff estimate that the trial will take approximately 7-10 days. Defendant
7 estimates that the trial will take approximately 5 full Court days.

8 **XIII. THE DATES ON WHICH TRIAL COUNSEL MAY HAVE
9 COMPLICATIONS TO BE CONSIDERED IN SETTING A TRIAL DATE**

10 DMI's counsel currently has the following conflicts due to trials already scheduled in
11 other actions: September 2019, December 2019 and January 2020.

12 Ovivo USA and its counsel currently have the following conflicts due to long
13 standing prior commitments: June 6 – 18, 2019; July 22-26, 2019; September 2019; October
14 11-31, 2019; and November 1-15, 2019.

15 **XIV. THE DATES ON WHICH CORPORATE DISCLOSURE STATEMENTS
16 WERE FILED**

17 DMI filed its corporate disclosure statement on January 10, 2018 (Dkt. No. 10), and
18 Ovivo USA filed its corporate disclosure statement on January 19, 2018 (Dkt. No. 30).

19 **XV. SERVICE ON ALL DEFENDANT(S) OR RESPONDENT(S)**

20 Service has been accomplished for all named parties.

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1 Dated this 25th day of January, 2019.
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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of January, 2019, I caused to be served the foregoing JOINT STATUS REPORT AND DISCOVERY PLAN on the following parties at the following addresses:

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- U.S. Postal Service, ordinary first class mail
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- hand delivery
- facsimile
- electronic service – via United States District Court – Western District of Washington’s Electronic Case Filing System (“ECF”)
- other (specify) _____

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